



## II. Factual Background

In its July 10, 2006 requests for production, the State requested information regarding Peterson's net worth, and Peterson objected to this request, claiming the information was irrelevant and confidential, but agreed to produce a copy of its current balance sheet.

**Request for Production #107:** Please produce all documents and materials reflecting, referring to or relating to your net worth.

**Answer:** Peterson objects to this request as it includes within its scope documents which are neither relevant, nor will they lead to the discovery of admissible evidence. Peterson Farms objects to this request as it includes documents within its scope which are protected from disclosure as confidential business information. Without waiving the foregoing objections and the General Objections, Peterson Farms will produce a copy of its current balance sheet in accordance with the terms of the Confidentiality Order entered by the Court in this case.

Ex. A.<sup>2</sup> The State served another request for production regarding Peterson's financial condition in its September 13, 2007 Requests for Production, and Peterson again objected and refused to produce fully responsive information, agreeing only to produce a copy of its current balance sheet.<sup>3</sup>

**Request for Production #11:** To the extent you have not already produced them, please produce copies of documents reflecting your financial statements for fiscal years 2002 to the present, as well as any other documents reflecting your net worth for fiscal years 2002 to the present. For purposes of this request for production, the term "financial statement" includes, but is not necessarily limited to, balance sheets, statements of income, statements of equity position, statements of cash flow, and all footnotes.

**Response:** Peterson objects to this request as duplicative of Request No. 107 of Plaintiff's July 10, 2006 Requests for Production, and incorporates its objections and response to said request as though fully stated herein.

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<sup>2</sup> Peterson later served a First Supplemental Responses of Defendants Peterson Farms, Inc. to State of Oklahoma's July 10, 2006 Set of Requests for Production, but did not alter or supplement its response to Request No. 107.

<sup>3</sup> In accordance with its agreement to produce a current balance sheet, Peterson produced a 2006 Comparative Balance Sheet (Bates No. PFIRUP-063693).

Ex. B.

In its continued effort to obtain responsive documents, the State provided Peterson with a list of seven specific types of financial documents it sought with regard to these two discovery requests in a letter dated October 24, 2008. *See* Ex. C. In November 2008, counsel for Peterson and the State met and conferred regarding these discovery requests and the State's October 24, 2008 letter. Counsel for the State again articulated the information sought in the discovery requests. On November 25, 2008, Peterson supplemented its initial production by producing **redacted** audited balance sheets for the years 2004 through 2007. Despite the State's request for complete financial statements and Peterson's agreement to produce balance sheets, Peterson produced only redacted balance sheets. On December 9, 2008 counsel for the State met and conferred by telephone with Peterson's counsel regarding the insufficiency of the production. Specifically, the State requested complete financial statements that would include unredacted income and cash flow information. During that call, counsel for Peterson agreed to discuss the State's request for additional financial information and to respond to counsel for the State. To date, Peterson has not responded to counsel for the State.

### **III. Argument**

The discovery regarding Peterson's net worth and corresponding financial documents is relevant to the State's claim for punitive damages, and Peterson's objections are without merit. In its written responses to this discovery, Peterson objected to the State's discovery regarding its financial condition on the claim that this information is irrelevant. This assertion is baseless. One of the seven factors for a jury to consider in evaluating punitive damages is "[t]he financial condition of the defendant." *See* 23 Okla. Stat. Ann. § 9.1. This Court has repeatedly held that discovery regarding a defendant's financial condition and net worth is appropriate when a claim

for punitive damages has been made. *See, e.g., Hightower v. Heritage Academy of Tulsa, Inc.*, 2008 WL 2937227 (N.D. Okla. July 29, 2008) (“Financial records are discoverable when punitive damages are at issue”); *American Benefit Life Ins. Co. v. Ille*, 87 F.R.D. 540, 542 (N.D. Okla. 1978) (“It is well settled in Oklahoma that in an action wherein punitive damages are proper, evidence of the financial worth of the defendant is competent and admissible.”). In the *City of Tulsa* case, this Court held that “[i]t would appear that *financial statements* reflecting the Defendants’ net worth from 1996 forward would be sufficient for the Plaintiffs’ needs . . . This order is without prejudice to Plaintiffs’ re-urging the motion *should additional financial information be necessary* as the case progresses.” *See* Ex. D, p. 6 (emphasis added). The full financial statements that the State has repeatedly requested, including information on income and cash flow, are obviously relevant evidence regarding Peterson’s financial condition, a key element in the punitive damages analysis. Moreover, recent tax returns are also relevant to this analysis in that they are the data used and relied upon to prepare the financial statements and contain additional information that demonstrate how certain debt obligations are treated among related entities and also contain information about how smaller private entities, such as Peterson, distribute profits. *See* Ex. E, ¶¶ 10-11.

The State’s expert who will testify about the financial conditions of the defendants, David Payne, drafted reports providing as much analysis as possible with the limited information produced thus far by Peterson, and that report was timely disclosed to Peterson on January 5, 2009. However, as explained in his report on Peterson, and his attached affidavit, the information requested by the State is important and relevant information for a fuller analysis.

See Ex. F [Payne Report]<sup>4</sup> and E. As Mr. Payne explains in his affidavit, “GAAP [financial] Statements, Footnote Disclosures, and Consolidating Data are relevant to evaluating the financial condition, net worth and/or Ability to Pay of the Defendants.” See Ex. E, ¶ 10. Although the balance sheets produced by Peterson contain some limited information about net worth (but not the integral notes to accompany these numbers), they do not include important information about Peterson’s income or cash flow. The income and cash flow of a defendant are important elements to understanding the true nature of a company’s financial condition. As Mr. Payne explains in his affidavit, “[t]he starting point for assessing the Financial Attributes affecting financial condition involves an evaluation of data as reported by the Defendants in their books, records, and financial statements (“Book Values”). Ability to Pay also considers true economic or intrinsic value (“Economic Value”), normalized earnings, and discretionary cash flows (“Earning Capacity”) under the control of the managements for the Defendants.” See Ex. E, ¶ 4. With only a balance sheet, a company’s net worth is stated, but net worth alone is not a full picture of a company’s financial condition. The level of a company’s income is an important element of whether there is real or intrinsic value above the book value stated in a balance sheet. Moreover, complete tax returns also provide information relevant to evaluating financial condition by showing how a company treats debt obligations and distributes income. See, e.g., Ex. E, ¶¶ 10-11.

While several years ago one might have argued that production of anything more than a current balance sheet is not relevant to the evaluation of a company’s financial condition, the playing field has been altered by today’s economy. A balance sheet is nothing more than a

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<sup>4</sup> Because of the confidential nature of the information contained in the report, a copy of this exhibit will be provided to the Court under separate cover for an *in camera* review pursuant to Paragraph 6 of the Confidentiality Order (DKT# 985).

snapshot in time of a company's net worth on a given day. In today's volatile economy, the net worth of a company can fluctuate considerably in a very short period of time. Therefore, a more in-depth analysis is needed to determine a full picture of financial condition of any given company. The State cannot imagine that Peterson or any other defendant in this matter would want anything but the most thorough and up-to-date analysis of their financial conditions presented to the jury.

Complete financial statements should be readily available for Peterson. As Mr. Payne explains, "[b]ased upon my training and experience with privately held companies [like Peterson] GAAP Statements and Footnote Disclosures are generally prepared and are available in the ordinary course of business due to Stakeholder Requirements." *See* Ex. E, ¶ 8. Likewise, complete tax returns for the last two years should also be readily available.

Any objection by Peterson's regarding confidentiality of the requested materials is also without merit. This argument ignores the November 2006 confidentiality order the Court entered in this case that provides protection for sensitive business information, which Peterson itself recognized in its response to the States Request for Production # 107. *See* DKT # 985 and Exhibit A. The confidentiality order provides methods for protecting confidential business information. Specifically, the order provides for a "Confidential" designation that protects designated documents from disclosure to third parties except for preparation of the case, and a "Confidential: Attorneys' Eyes Only" designation that protects designated information from disclosure to third parties as well as a further level of protection for Defendants from each other, since they are competitors in the same industry. *See* DKT# 985, pp. 2-6. The confidentiality order provides more than adequate protection for the relevant information the State is requesting about the Peterson's financial condition. Peterson is clearly aware of this protection. Moreover,

in the October 24, 2008 letter referenced above, Peterson was informed by counsel for the State that Mr. Payne had executed the Acknowledgement of Understanding and Agreement to be Bound to the Confidentiality Agreement. *See* Exhibit C.

With Peterson having no valid objections to the requested discovery, the State requests that the Court order Peterson to provide the following documents that are responsive to the State's requests for production: Complete unredacted financial statements, including information about income and cash flow for calendar years ending in 2003-2008, and complete filed tax returns for 2006 and 2007 (including all supporting schedules, disclosures, and detailed appreciation schedules).

### III. **Conclusion**

For the reasons stated herein, the Court should order Peterson to respond to the State's requests for information pertaining to its financial condition and to provide the specific documents delineated herein. Because this information is readily available to Peterson and these requests have been outstanding for a very long time, the State requests that Peterson be requested to produce these materials on an expedited basis. The State's expert, David Payne, will need to review these documents upon receipt of them from Peterson, thus the State anticipates it will need to request leave to supplement Mr. Payne's expert report once he has had an opportunity to review this information.

Respectfully Submitted,

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